

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 850 of 2005(A)

**AGAINST THE ORDER IN IA 1303/2004. IN
OS.18/2001 of MUNSIF COURT,CHENGANNUR**
.....

PETITIONER:

**NEELAKANDAN NAIR, VASU NAIR, AGED
68 YEARS, VETTIYIL VEETIL, KODUKULANJI,
KARODU MURI, VENMONY VILLAGE, CHENGANNUR TALUK.**

BY ADV. SRI.N.ASHOK KUMAR

RESPONDENTS:

- 1. PARAMESWARA KURUP, SREESADANATHIL,
KODUKULANJI, KARODU MURI, VENMONY VILLAGE,
CHENGANNUR TALUK.**
- 2. STATE OF KERALA, REPRESENTED BY THE DISTRICT
COLLECTOR, ALAPPUZHA DISTRICT.**
- 3. ENGINEER, BLOCK DEVELOPMENT OFFICE,
PULIYOOR, CHENGANNUR TALUK.**

BY ADV. SRI.P.HARIDAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.850/2005 A

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF JUDGMENT IN C.R.P.467/2003 HIGH COURT OF KERALA DTD. 24/03/2003.**
- EXT.P2: COPY OF TAX RECEIPT DTD. 5/07/2004 ISSUED FROM VILLAGE OFFICE, VENMONY.**
- EXT.P3: COPY OF COMMISSION REPORT IN O.S.18/01 MUNSIFF'S COURT, CHENGANNUR DTD. 24/06/04.**
- EXT.P4: COPY OF APPLICATION IN I.A.NO.1303/04 IN O.S.18/01 FILED BY PETITIONER BEFORE MUNSIFF'S COURT, CHENGANNUR DTD. 20/07/04.**
- EXT.P5: COPY OF ORDER IN I.A.1303/04 IN O.S.18/01 OF MUNSIFF'S COURT, CHENGANNUR DTD. 23/09/04.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

.....
W.P.(C)No.850 OF 2005
.....

DATED THIS THE 11TH JUNE, 2007

J U D G M E N T

Ext.P5 order dismissing an application for amendment of the plaint is under challenge. The suit was amended on a previous occasion on the basis of Ext.P1 order issued by this Court in C.R.P.No.467 of 2003. The present application for a further amendment of the plaint seeks incorporation of the resurvey numbers and extent of the plaint schedule property discernible from the re-survey plan. The learned Munsiff has noticed that the present application is filed at a highly belated stage and that if the same is allowed, the extent of the plaint schedule property will be permitted to be enhanced, after the entire evidence in the suit has already been recorded. The learned Munsiff has also noticed that the basis of the amendment is also not substantiated by the petitioner. The learned Munsiff refers to the amended Code of Civil Procedure which prohibits amendments after evidence is adduced and takes the view that there is no sufficient reason to allow the amendment as per the proviso to Order VI Rule 17.

2. Heard both sides.

3. The prayer in the application is to substitute the extent of

the plaint schedule property mentioned in the original plaint as 16 Ares by the extent of 17.60 Ares. In other words, the effect of the amendment will be to lay foundation for a plea that 1.60 Ares of the petitioner's property is encroached upon by the defendants. The amendment is sought obviously on the basis of Ext.P3 plan submitted by the commissioner on the basis of measurement conducted with reference to resurvey records. The learned Munsiff was justified in his view that the application was made at a highly belated stage, and I also feel that the petitioner should have filed the application as soon as the commissioner's plan was made available to him. Mr.P.Haridas, learned counsel for the 1st respondent submits that the amendment is likely to enable the petitioner to get over the bar of limitation for the prayer for recovery and in that way will cause prejudice to the 1st respondent.

4. Having considered the rival submissions, I am of the view that the application can be allowed imposing terms on the petitioner and clarifying that the amendment will not enable the petitioner to get over the bar of limitation, if the same is available to the defendants. Ext.P5 is accordingly set aside and I.A.No.1303 of 2004 will stand allowed on condition that the petitioner pays to the 1st respondent

either directly or through his advocate in this Court a sum of Rs.1000/- within 10 days from today. If payment is made as above, the I.A. will stand allowed. However, it is made clear that the grant of the I.A. will not enable the petitioner to get away from the admissions, if any, contained in the original plaint, if he is unable to explain them away. At any rate, the amendment will not enable the petitioner to get over the bar of limitation for his prayer for recovery, if there is such a bar. It is clarified that the amendment will operate only prospectively and that the learned Munsiff will permit the respondents to file additional written statement and raise additional issues regarding limitation, if such an issue arises.

The Writ Petition is allowed as above.

(PIUS C.KURIAKOSE, JUDGE)

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